in this case to show that one rather than the other should apply in Perak.

In this case the only evidence given, both as to facts and the special law said to apply, was given by the parties. But it is not for the parties to invent or state the law which they say is applicable. At the very best it is not a subjective standard of what they honestly believe the law to require, which is to bind their actions, but an objective external standard of what the law actually is. And when the law properly applicable is a foreign law, such law must be proved by expert evidence, though like any other question of facts the parties may agree on it. Mr. Yew Koh, in objecting to this matter being made the subject of revision, referred to other Indian cases in which it was said that in a revisional matter a Court does not take a technical view, nor is it a question of whether the finding was acceptable to the revising Court on a balance of the evidence recorded in the trial Court. The judgment in the second case referred to, *Shanker Singh v. Emperor*[8], goes on to say:—

> The correctness of the finding, sentence or order also implies a legal defence such as the finding being based on an entire want of evidence.....

Here it is not a technical matter. It is a question of the entire lack of proper evidence required to show the validity of the marriage.

In point of fact, the learned Magistrate did not rely on the cases referred to or on any custom, but on the contract produced P.1. The cases cited do not show that such a contract is general or is required to constitute a Chinese marriage or would in itself constitute a Chinese marriage. The principal case relied upon *Re Lee Choon Guan,* puts the matter on quite a different basis, and treats it almost as a matter of fact, on the existence of the practice of intercourse, its continuance, and the intention. Under the law as laid down in *Re Lee Choon Guan,* it would be quite impossible to prove a secondary marriage at the outset. It seems to me that the statement of the law, whencever derived, in that case cannot be exhaustive. The requirements there laid down are cumulative, and give no basis whatever for Mr. Yew Koh's contention that the matter depends on intention, and intention alone. It was held that repute or recognition was also necessary. In that case some celebrations seem to have taken place, but no importance was attached to them because they were entirely one sided. The man was not present nor any members of his family. The document on which the Magistrate relies is itself inconsistent with the law there laid down as it recites, apparently as a necessary condition for the marriage "that we have the permission of the heads of our respective families." That may well be required, but it is quite inconsistent with the theory that the matter depends on the intention of the parties alone.

Mr. Yew Koh seems to feel strongly about this matter, and contends that his client has been deceived and abused. The contract, P.1, undoubtedly appears to be designed to lead the woman to suppose that she was entering into a valid marriage. Deceit is not an alternative to marriage and does not make a wife.

It is possible that she is married, but she has not proved it. As was pointed out above these proceedings are not by way of punishment for desertion, immorality or for anything else, but a simple means by which a married woman obtains her rights. It is essential that she should prove that she is a married woman and has a married woman's rights. They are not available to any loose woman. I do not, by this, wish to reflect on the respondent, but she has not proved the very foundation on which this remedy rests. Even if she be not married, it does not follow that she is without redress. If she has been deceived and has suffered damage, there is an appropriate action. If she has been promised marriage and that promise has not been carried out, she may well have an action for its breach. In this case a contract seems certainly to have been made, and a sum of money paid to a broker, or some person who apparently makes a living in this way as a go-between, and who might not only be presumed to know the law but might be supposed to undertake to procure a valid legal result. I have no doubt that whatever this woman's position may be, she has either not chosen the right remedy or, if so, has failed to prove the very foundation of her case. The appeal must, therefore, be allowed. I do not send the matter back to the Magistrate because she can always renew her application, if well advised to do so.

Appeal Allowed.

RATNASAMY v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Laville, J.) March 25, 1948]
[J.B.—Cr. App. No. 2 of 1948]

Excise Enactment, Johore, (No. 102) s. 55—Jurisdiction—Courts Ordinance, 1946, s. 18 and Sched. 4.

When a section lays down that "all prosecutions under this Enactment may be had before the Court of a Magistrate of the first class; and such Court may impose any penalty provided by this Enactment anything

in any other Enactment to the contrary notwithstanding", that wording is permissive and obligatory, and has the effect of increasing the power of punishment for a District Court (Court of a Magistrate of the first class) when trying cases under the Enactment, but does not remove jurisdiction from nor affect the power of punishment of a Magistrate's Court when doing the same.

MAGISTRATE'S CRIMINAL APPEAL.

S. C. MacIntyre for Appellant.

W. H. McCall for Respondent.

Laville, J. : — Ratnasamy, holder of licence No. 15/47 under the Excise Enactment of Johore, Laws of Johore No. 102, for premises No. 7, Jalan Station, Bekok, appeals against a conviction for storing 20 quarts, 12 pints and 19 pegs of intoxicating liquor at a place other than that specified in his licence, namely at No. 4, Jalan Gunong, Bekok, between the 3rd and 6th December, 1947. He was fined $75 or in default 1 month R.I.

The prosecution evidence is that on 3rd December P.O.D.O. 871 visited premises No. 7, Jalan Station, Bekok, and found appellant had vacated it. He then visited No. 39, Jalan Gunong, Bekok, and found no sign of him there, and finally found at No. 4, Jalan Gunong, Bekok, 20 quart bottles, 12 pint bottles and 19 peg bottles of liquor with some glasses and measures on a table and the licence No. 15/47 covering No. 7, Jalan Station bearing the photograph of appellant displayed.

These liquors and licence were found there on 6th December by a preventive officer, Mohamed Sam bin H. A. Rahim, who visited the place on receiving the report of P.O.D.O. 871.

The defence of the appellant was that finding No. 7, Jalan Station, unsuitable for his business, he removed to No. 39, Jalan Gunong, for a short while and finally found suitable accommodation at No. 4, Jalan Gunong, on 15.11.47. On 19.11.47 he got a letter written by a Chinese to the Excise Department stating that he had removed to No. 4, Jalan Gunong, and asking that department to approve the change.

The prosecution admit receipt of this letter and say it was not replied to, and that it asked approval for removal to No. 39, Jalan Gunong, and not to No. 4, Jalan Gunong, and that it had been placed before the Licensing Board. The letter was exhibited by appellant and is typewritten, but the number 39, Jalan Gunong, has been altered in ink to No. 4. No explanation is offered as to how the letter sent to the Licensing Board is found in the hands of the sender, though the former admit its receipt.

The Magistrate convicted and on representation by the prosecuting officer that the business was a big one and that he wished to press the case, fined the appellant as stated above.

The grounds of appeal are that the Magistrate convicted not on strength of prosecution case but on appellant's admissions in his evidence, in that prosecution evidence refers to liquor and not to intoxicating liquor, and that the said intoxicating liquor was not produced as an exhibit, nor was it certified as such by a competent analyst, nor was licence No. 15/47 produced in Court.

In my opinion there is no substance in these grounds: the charge referred to intoxicating liquor and it was quite clear that the prosecution witnesses used the word liquor as a short form for intoxicating liquor; both witnesses who visited the place were Excise officers and as such familiar with intoxicating liquor and able to recognise the same, and there was no reason to doubt that it was such liquor, nor was the point ever taken in cross-examination. Similar considerations apply to the contents of the licence.

It was also argued, granted the liquor was intoxicating, that the Magistrate should have held in the absence of any evidence by the prosecution to the contrary that it was stored for personal consumption only pending approval of the appellant's application to transfer his licence to No. 4, Jalan Gunong. In my view this argument must fail. Under section 24 (i) of the Enactment all storage of liquor is made an offence in unlicensed premises, with the proviso that the section does not apply to liquor stored for private consumption. Section 105 of the Evidence Ordinance enjoins on the Court the obligation of presuming the absence of circumstances that bring the case within a proviso in the absence of proof of such circumstances and the onus of proving those circumstances lies on the person accused. They cannot, therefore, be proved till the prosecution case is complete and the defence entered upon. In this case there was no attempt in cross-examination or in the defence evidence to prove such circumstances.

At the hearing of the appeal a fresh ground of appeal was set up at very short notice, but was admitted with the consent of the learned Deputy Public Prosecutor. It was argued that the Court of a Magistrate had no jurisdiction to try this case in that under section 55 of the Enactment jurisdiction was reserved to the District Court only. That section lays down that all prosecutions under the Enactment may be had

before the Court of a Magistrate of the 1st class which may impose any penalty provided by the Enactment, anything in any other Enactment to the contrary notwithstanding. The Court described in that section was superseded by the District Court set up by Ordinance No. 3 of 1946, section 18 and schedule 4 with similar powers to the old Court of 1st class Magistrate.

The wording of section 55 of the Excise Enactment is however permissive and not obligatory, and the section was enacted in my view for the purpose of enabling the 1st class Magistrate's Court to impose sentences which, owing to its power of punishment being limited, it could not otherwise impose.

The Court of a 1st class Magistrate was superseded by virtue of section 18 and schedule 4 of Ordinance 3 of 1946 (Courts) by the District Court, and by sections 20 and 21 its jurisdictional range and powers of punishment were increased, but the latter still are below that required by some of the penal sections of the Excise Enactment.

Section 55 of the Excise Enactment appears to give a District Court for the purposes of the Enactment alone the same jurisdictional range and powers of punishment as the Supreme Court, though it may be argued that while increasing its power of punishment to any penalty laid down by the Enactment it does not increase its jurisdictional range. The question of increased jurisdictional range does not however arise in the case under consideration in view of the fact that all offences created by the Enactment fall within the jurisdictional range of the District Court, as laid down in section 20, Ordinance No. 3 of 1946.

The powers of section 55 of the Excise Enactment do not however oust the jurisdiction of a Magistrate's Court where offences under the Enactment fall within it. This jurisdiction is defined in section 26 of Ordinance 3 of 1946 as amended by section 4 of Ordinance 14 of 1946, and the power of punishment is laid down for Magistrate's Courts in section 27 of Ordinance 3 of 1946.

Shortly it may be said that section 55 of the Excise Enactment increases the power of punishment for a District Court when trying cases under the Enactment, but does not affect the power of punishment of a Magistrate's Court when doing the same.

In this case the offence charged fell within the jurisdictional limits of a Magistrate's Court, and was rightly tried by such a Court. The punishment inflicted was one well within the powers granted to such Court.

I therefore hold that the conviction was correct and the sentence a lawful one and dismiss the appeal as far as the question of conviction is concerned, but in view of the circumstances disclosed by this case the sentence, I think, is excessive. The accused, it is clear, committed a technical offence and at no time was seeking to store intoxicating liquor in unlicensed premises. As soon as he had got a suitable premises he applied for approval to the Board. I can see no grounds for thinking that because the business is a big one the offence is made more heinous, and no other reason has been adduced by the prosecution. A token fine would, I think, meet the case.

The conviction is maintained and the appeal in regard to that is dismissed. The sentence is altered to one of a fine of $25/- or 14 days R.I. The balance of the fine of $75/- which has been paid is to be refunded.

Conviction Upheld — Sentence Varied.

LEE KIEW & 17 ORS. v. PUBLIC PROSECUTOR.

[App. Cr. Juris. (Pretheroe, Ag. C.J.) March 18, 1948]
[K.L. — Mag. Cr. App. No. 7 of 1948]

Penal Code, s. 447 — Essential element in the offence of criminal trespass — Plea of guilty — What constitutes.

One essential element in the offence of criminal trespass is remaining on property "with intent thereby to intimidate, insult or annoy" the person in possession of the property. A plea of guilty cannot be accepted when this "intent" is not admitted by the accused.

MAGISTRATE'S CRIMINAL APPEAL.

Benjamin for the Appellants.

W. Buhagiar for the Respondent.

Pretheroe, Ag. C. J. : — When the appellants appeared before the lower Court, and were required to enter their pleas, none of them either pleaded guilty or claimed trial. Instead each made a statement on the same lines, and the following may be taken as typical of those statements :—

> "Wanted to move but no money to go: planted sweet potatoes and tapioca".

The learned Magistrate accepted this as a plea of guilty. Now, whatever might have been the effect of those words in a suit, they certainly do not amount to a plea of guilty under section 447 of the Penal